

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GREGORY HOLDER,

Petitioner,

v.

Case Number: 09-10973

CATHERINE S. BAUMAN,

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR DEFAULT JUDGMENT

Petitioner Gregory Holder, a state inmate, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the court on Petitioner's "Motion for Default Judgment" in which Petitioner points to Respondent's failure to timely answer his petition. In other pleadings before the court, Petitioner acknowledges that Respondent actually attempted to file an answer to his petition, but inadvertently filed the answer on a separate, related, docket. (See, e.g., 11/18/09 Resp. at 2-3; see also 09-10954, 11/18/09 Resp at 2.) The court will deny the motion.

A default judgment is generally unavailable in a habeas-corpus proceeding on the ground that government officials failed to file a timely response to the petition. See, e.g., *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970). *Mahaday v. Cason*, 222 F.Supp. 2d 918, 921 -922 (E.D. Mich. 2002). Petitioner at all times bears the burden to show that he is in custody in violation of the United States Constitution. *Allen*, 424 F.2d at 138. "The failure of State officials to file a timely return does not relieve the prisoner of his burden of proof. . . . Despite the delinquency of the State, the District Court was

obligated to decide the case on its merits.” *Id.*

IT IS ORDERED that Petitioner’s “Motion for Default Judgment” [Dkt. # 8] is
DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 30, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 30, 2009, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522